

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: NEW ENGLAND
COMPOUNDING PHARMACY, INC.
PRODUCTS LIABILITY LITIGATION

MDL NO. 1:13-MD-2419-FDS

JUDGE RYA W. ZOBEL

This Document Relates to:

All Cases

**DEFENDANT AMERIDOSE LLC'S MOTION TO SHOW CAUSE WHY CASES
SHOULD NOT BE DISMISSED.**

Ameridose LLC moves this Court for an order to show cause, within fourteen days, why the cases listed on Exhibit A should not be dismissed, with prejudice, as to Ameridose LLC.

ARGUMENT

On November 24, 2014, the Trustee, Paul D. Moore, entered into the Ameridose LLC Insurance Settlement, Release and Injunction Agreement (the "Ameridose Settlement Agreement") (Bankruptcy Docket No. 1123-4; NECC MDL Docket No. 1694-2 at Exhibit 2.) In that Agreement, Ameridose and its insured, Pharmacists Mutual Insurance Company ("PMIC"), agreed that upon approval of the Chapter 11 Plan of New England Compounding Pharmacy, Inc., their liability in these cases would be extinguished and they would be beneficiaries of the plan injunctions. (*See* Section 10.06 of the Plan, Bankruptcy Docket No. 1355; NECC MDL Docket No. 1890-1 at Exhibit A.)

On May 20, 2015, the United States Bankruptcy Court for the Eastern District of Massachusetts confirmed the Third Amended Joint Chapter 11 Plan of New England Compounding Pharmacy, Inc. (the "Plan") (*See* Bankruptcy Docket Nos. 1352-1 and 1355;

NECC MDL Docket Nos. 1890 and 1890-1.) The Plan directives apply as of the Plan Effective Date, which is June 4, 2015.

Exhibit A contains a list of all the cases filed against Ameridose. All of these cases are in the NECC MDL. None of these cases are pending in state or federal courts in other districts. The cases listed on Exhibit A must be dismissed because they are terminated against Ameridose by operation of the Bankruptcy Court's Order confirming the Plan. Among other things, confirmation of the Plan and the occurrence of the Plan Effective Date triggers an injunction in favor of the Other Contributing Parties, including Ameridose, barring and enjoining the continued prosecution of the cases pending against Ameridose in the MDL, as well as the assertion by any Person or Entity of any claim or demand relating in any way to the Debtor or the Drugs. (See Paragraph 16 of the Plan Confirmation Order, Bankruptcy Docket No. 1355; Section 10.06(iv) of the Plan; Section VI(d) of the Ameridose Settlement Agreement.)

Furthermore, Section IX(d) of the Ameridose Settlement Agreement requires the parties to cooperate to effectuate the settlement. The parties have communicated. While the PSC has been cooperative and is working on a proposal to dismiss the cases listed on Exhibit A, the PSC has many matters pending before it surrounding the Plan Effective Date, as well as ongoing depositions. It has not yet filed a Notice to Dismiss and Ameridose is entitled to dismissals at the earliest feasible time.¹ Furthermore, Ameridose's insurance company's obligation to defend it terminates as of the Plan Effective Date, which is June 4, 2015.

Accordingly, Ameridose LLC respectfully requests that this Court issue an Order to show cause, within fourteen days, as to why the cases on Exhibit A should not be dismissed with

¹ Importantly, no party in the NECC MDL has standing to object to the dismissal of the cases on Exhibit A. No parties to this MDL objected to the injunction in Bankruptcy Court. Furthermore, under Paragraph 16 of the Plan Confirmation Order and Section 10.07 of the Plan, certain defenses for non-settling MDL defendants based upon comparative fault are preserved to the extent they are available under applicable state law. Therefore, dismissing the cases on Exhibit A will not affect the rights and obligations of the Tennessee Clinic Defendants, the St. Thomas Entities, or any other party attempting to assert certain defenses based upon comparative fault.

prejudice or, in the alternative, why the PSC should not be required to file a Notice of Dismissal of all cases listed on Exhibit A pursuant to Rule 41 of the Federal Rules of Civil Procedure.

Respectfully submitted,

/s/ Matthew P. Moriarty

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CERTIFICATE OF SERVICE

I certify that on June 4, 2015, a copy of the foregoing **Ameridose LLC's Motion to Show Cause Why Cases Should Not be Dismissed** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access the filing through the Court's system.

/s/ Matthew P. Moriarty

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